

**DANILO M. HERNANDEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), TELENGTAN BROTHERS AND SONS, INC., AND LA SUERTE CIGAR &#038; CIGARETTE FACTORY, RESPONDENTS.**

Ponente: SALAZAR-FERNANDO, J.

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**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision dated August 30, 2013[2] and the Resolution dated October 30, 2013[3] of the National Labor Relations Commission (NLRC), First Division in NLRC LAC No. 02- 000584-13 NLRC-NCR Case No. 07-10876-09 entitled “Danilo M. Hernandez, Complainant, vs. Telengtan Brothers and Sons, Inc./La Suerte Cigar & Cigarette Factory/Susan Resurreccion/Benjamin Ching, Respondents.”, the dispositive portions of which read:

Decision dated August 30, 2013:

“WHEREFORE, respondents' appeal is GRANTED and the Decision promulgated on December 13, 2012 is VACATED AND SET ASIDE. A new one is entered DISMISSING the complaint for illegal dismissal and nonpayment of the 13th month pay for lack of merit.

SO ORDERED.[4]”

Resolution dated October 30, 2013:

“WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the tenor shall be entertained.

SO ORDERED.[5]”

The facts are:

Petitioner Danilo M. Hernandez (petitioner for brevity) was employed by private respondent Telengtan Brothers and Sons Inc., and La Suerte Cigar & Cigarette Factory (company for brevity) for 35 years, and worked as the latter's warehouse supervisor for the past 30 years.[6] Initially, he was in charge of the company's warehouses E, F and H and Customs Bonded Warehouse.[7] Sometime in 2005, warehouse C was placed under his supervision.[8] The Chemical Room where the drums of Menthol Crystal were kept, was located in warehouse C.[9] Allegedly, when warehouse C was assigned to him, his assistant, Manuel Manay, Jr., was appointed by his immediate supervisor, Cesar Ong, to take charge of the Chemical Room as well as the Menthol Crystals.[10] Sometime in December 2008, after they conducted their regular inventory, they discovered that 96 drums of Menthol Crystals were missing.[11] They reported the incident to their supervisor, who referred the case to the National Bureau of Investigation (NBI for brevity).[12] After the investigation, the NBI charged him and Roger Z. Callanta a.k.a Macmac (the company's driver) for Qualified Theft in the Prosecutor's Office in Parañaque,[13] but the charge against him was dropped for lack of evidence.[14] This notwithstanding, the company sent him a Notice to Explain,[15] charging him for the loss of the 96 drums of Menthol Crystals, and cited his gross and habitual

negligence in the performance of his duties as a ground for the company's loss of the trust and confidence reposed upon him.[16] He was also placed under preventive suspension.[17] On May 28, 2009, he submitted his answer to these charges.[18] Thereafter, an investigation was conducted.[19] Based on the evidence gathered in the investigation, he was found guilty of gross negligence in the performance of his duties as a supervisor and was held liable for breach of the company's trust and confidence.[20] Thus, he was effectively terminated on August 17, 2009.[21] Aggrieved, he filed a complaint[22] for illegal dismissal against the company and its officers Atty. Susan M. Resurreccion (Assistant Vice- President for Human Resource Management/Internal Counsel) and Benjamin Ching (Executive Vice-President) (private respondents for brevity), before the NLRC. Efforts to settle the case failed, thus the parties were directed to submit their respective position papers.[23]

In his Position Paper,[24] petitioner denied that he was negligent/remiss in the performance of his duties and responsibilities as a warehouse supervisor, and contended that he should not be charged for breach of trust and confidence. He argued that he could not be faulted for the loss of the 96 drums of Menthol Crystals kept inside Warehouse C because the care over said items was not assigned to him but to his assistant, Manuel Manay, Jr. Furthermore, he explained that he was not the only one who had access inside Warehouse C as there were other people who were authorized by the company to enter the warehouse. He maintained that the act of the company in placing him under preventive suspension for five (5) months after the incident was illegal and highly suspicious considering that the company could be using the incident as a way to avoid payment of his benefits as he was due to retire in October 2009. He also alleged that due process was not observed in his dismissal claiming that he was being forced to voluntarily resign and forfeit all his benefits. These events showed that his dismissal was not justified, thus he prayed for reinstatement, the payment of his full backwages and 13[th] month pay, including damages and attorney's fees.

In their Position Paper,[25] private respondents claimed that the termination of petitioner was a valid exercise of their management prerogative. They contended that petitioner's dismissal was valid and for a cause since it was the latter's negligence in handling the keys of Warehouse C which was the proximate cause of the theft of the 96 drums of Menthol Crystals, causing the company to suffer a loss in the amount of P2.4 Million. They also pointed out that petitioner held a position of trust as custodian of the company's properties, and the loss of this trust and confidence reposed upon him all the more justified his dismissal. They maintained that they observed due process in terminating the petitioner by serving the required notices, giving the latter a reasonable opportunity to answer the charge against him and even conducted an investigation/hearing on the incident. After due consideration of the evidence, the company decided to terminate his employment and he was served a Notice of Termination. Premised on the ground that the dismissal is valid, they alleged that petitioner's reinstatement and other monetary claims should not be granted.

In a Decision[26] dated December 13, 2012, the Labor Arbiter declared that petitioner's dismissal was illegal and ordered private respondents to pay his backwages, separation pay and attorney's fees. Private respondents appealed to the NLRC.[27] On August 30, 2013 public respondent NLRC reversed the ruling of the labor arbiter, and dismissed the complaint for lack of merit.[28] Petitioner filed a Motion for Reconsideration[29] but his motion was denied.[30]

Hence, this petition raising the following grounds:[31]

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDINGS OF THE LABOR ARBITER WHICH IS FOUNDED ON PROVEN OR ESTABLISHED FACTS.

II.

THE NLRC LIKewise ERRED IN FINDING SUFFICIENT BASIS TO JUSTIFY THE TERMINATION OF PETITIONER FOR GROSS NEGLIGENCE.

The petition is without merit.

In order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process, which means that the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing.[32] Here, it is private respondents' contention that the dismissal of the petitioner is valid and for a just cause because he committed gross and habitual negligence in the performance of his duties as warehouse supervisor, and his actions caused the company to lose that trust and confidence reposed upon him. A careful evaluation of the records reveal that the evidence supports their argument.

Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties.[33] Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[34] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[35] This includes gross inefficiency, negligence and carelessness.[36] Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[37] In this case, petitioner's gross and habitual neglect of duty is illustrated in the following statements:

“Transcript of Stenographic Notes of the Investigation regarding the loss of 96 drums of Menthol Crystal at warehouse C last December, conducted on June 2, 2009, from 3:05 P.M. To 4:45 P.M., LSCCF Conference Room:

xxx xxx xxx

Atty Resurreccion: Sa warehouse C sino ba ang supervisor, who is attending to this? Ikaw lang?

Mr. Hernandez: Ako lang.

Atty Resurreccion: Sino ang in-charge sa susi ng lahat ng warehouses?

Mr. Hernandez: Ako.

Atty Resurreccion: Sa opening ikaw ito at closing ikaw din? How do you handle these keys? Ito bang susing ito ay nasa isang bundle? Saan mo ito inilalagay?

Mr. Hernandez: Sa opisina ko sa Warehouse E lahat ng susi ng mga bodega ay nakalagay sa pako. Sa lamesa ko sa likod ko nandoon lahat ng susi. May kasama ako sa opisina si Manuel Manay. Kung may lumalapit man sa akin halimbawa sabihin, “Sir bubuksan ko ang Warehouse sa ganyan.” Mag-uutos ako na buksan ang warehouse na ganyan dahil may ilalabas na order. Kukunin ko kundi man ako ang magbubukas ibinibigay ko sa maglalabas ng order ang susi para buksan.

xxx xxx xxx

Atty Resurreccion: Ang mga susi sa Warehouse C samasama ba o hiwahiwalay?

Mr. Hernandez: Sa Warehouse C isang bundle 'yun.

Atty Resurreccion: Anybody who is interested makikita nito ang lahat ng susi ng Warehouse C?

Mr. Hernandez: Isang bundle 'yun pero kung alam kung alin ang susi ng pinto mabubuksan mo 'yun.

Atty Resurreccion: May identification marks ba ang mga susi?

Mr. Hernandez: Yes, kung anong bodega 'yun.

Atty Resurreccion: Ikaw ang primarily in-charge sa mga susi ng bodega with regards (sic) sa pagbukas at pagsara. May assistant ka si Manay.

Mr. Hernandez: Yes.

Atty Resurreccion: Sa pagsasara ng Warehouse nyo, kayo ba ni Manay ang nagsasara o ibinibigay nyo sa iba? Totoo ba na there are times na iba ang nagsasara?

Mr. Hernandez: Ako ang nagbukas, si Manay ang nagsasara. Pag may fumigation ini-endorse ko ang susi sa guwardiya at ang tiga IFS na ang nagsasara kasi gabi ginagawa 'yun pero bihira naman ito. Minsan wala in a year.

Atty Resurreccion: Sa non-tabacco materials ano sa tingin mo bakit may sariling lagayan 'yun under lock and key?

Mr. Hernandez: During the time of Alex Gan nagkaroon din ng nakawan ng menthol. Ang ginawa nila kinandaduhan na nila kaya noong 2005 nang iturn over sa amin ni Cezar nilagyan ng lock. Noong iturn over ni Santiago Co ibinigay sa amin ang susi na isa lang hindi namin alam kung nasaan ang mga duplicate nito.

Atty Resurreccion: Kaya ko tinatanong 'yun because there was no forcible entry. Ang susing 'yun ang ginamit sa pagbukas at pagkuha ng 96 drums. Tama ba 'yun?

Mr. Hernandez: Tama.[38]"

Accordingly, as the warehouse supervisor in charge of the keys to the warehouse, it was expected that petitioner would employ due diligence in monitoring who entered the warehouse and who borrowed the keys entrusted to him. However, the opposite was shown in the above narration. His habit of just putting the keys in the open[39] and his practice of indiscriminately handing the bundle of keys to anyone who borrowed them[40] speak volume of how negligent he was in doing his task in securing the warehouse and the company properties. Furthermore, this same negligent act not only defeated the purpose of the company to prevent another incident of pilferage,[41] it actually contributed/facilitated in the theft of company properties.[42] As the company's custodian, petitioner held a position of trust,[43] and his negligent acts of supervising, which caused the company to suffer significant losses, provided enough justification for the latter to lose trust in him and saw him unfit to continue his employment as such.[44] This is solidified in jurisprudence which states that as long as the act that breached the employer's trust is founded on established facts, the employee's dismissal on this ground is justified.[45] The conclusion[46] of public respondent NLRC in this case is well taken:

"In sum, We find that there is a compelling reason for us to reverse the ruling of the Labor Arbiter declaring complainant's dismissal from his employment as illegal. There is substantial evidence which overwhelmingly shows that complainant was indeed guilty of habitual and gross neglect of duties. The fact that there occurred a significant shortage of the menthol crystals by allowing so many persons to have possession and usage of the bundle of keys of the warehouses, which were under complainant's safekeeping, was gross negligence. Said gross negligence necessarily exposed respondents to a great risk of losing their items/materials thru pilferage, as what exactly happened in this case. Verily, this warrants his dismissal from employment as respondent's Warehouse Supervisor, for indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's interest."

Procedural due process is satisfied upon compliance with the two-notice rule, to wit: (1) the employer must inform the employee of the specific acts or omissions for which his dismissal is sought; and (2) after the employee has been given the opportunity to be heard, the employer must inform him of the decision to terminate his employment.[47] Here, the observance of this procedure is also established in the records. To note, prior to his

dismissal, private respondents sent petitioner a Notice to Explain[48] enumerating his offenses. After he responded and filed his explanation,[49] an investigation ensued where he was also given an opportunity to state his defenses.[50] However, at the end of the investigation, his negligence was proven and he was deemed unfit to continue with his employment, thus he was issued a Notice of Termination.[51]

All these facts not only amplify the NLRC's findings that petitioner's dismissal is valid, it also removes any indication that the NLRC's decision was arrived at arbitrarily.

Concomitantly, in a special civil action for certiorari, it is the petitioner who has the burden of proof to show that the respondent tribunal committed not merely a reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision.[52] Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[53] Here, petitioner failed to hurdle this burden. Unless there is a showing that public respondent NLRC patently disregarded evidence or had misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated, allegations of arbitrariness fails vis-avis a demonstration that its findings are well substantiated.[54]

WHEREFORE, premises considered, the petition is DENIED. The Decision dated August 30, 2013 and the Resolution dated October 30, 2013 of the National Labor Relations Commission in NLRC LAC No. 02-000584-13 NLRCNCR Case No. 07-10876-09, are hereby AFFIRMED.

### **SO ORDERED.**

Bruselas, Jr., and Barrios,[\*] JJ., concur.

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[\*] Vice Justice Samuel H. Gaerlan, Jr. per Office Order No. 270-14-RSF dated June 6, 2014.

[1] Rollo, pp. 3-15

[2] Rollo, pp. 137-152

[3] Rollo, pp. 161-162

[4] Rollo, pp. 151-152

[5] Rollo, p. 162

[6] Rollo, pp. 6, 23, 124, 138

[7] Rollo, pp. 6, 23, 124, 138

[8] Rollo, pp. 6, 23, 124, 138

[9] Rollo, pp. 6, 24, 52, 124-125, 127, 138

[10] Rollo, pp. 6, 24, 125, 138

[11] Rollo, pp. 6, 24, 52, 125, 127, 138-139

[12] Rollo, pp. 6, 24, 53-54, 128, 138, 140

- [13] Rollo, pp. 6-7, 25, 38-41, 86-89, 126, 138
- [14] Rollo, pp. 6-7, 25, 42-45, 126, 139
- [15] Rollo, pp. 33-34, 90-91
- [16] Rollo, pp. 6, 24, 54, 125, 129, 138, 140
- [17] Rollo, pp. 6, 24, 125, 138, 140
- [18] Rollo, pp. 24, 35-37, 55, 128, 140
- [19] Rollo, pp. 55, 97-116, 120-123, 129, 140
- [20] Rollo, pp. 46-48, 55, 117-119, 129
- [21] Rollo, pp. 48, 55, 119, 129
- [22] Rollo, pp. 18-20
- [23] Rollo, p. 50
- [24] Rollo, pp. 23-32
- [25] Rollo, pp. 50-66
- [26] Rollo, pp. 124-136
- [27] Rollo, pp. 169-206
- [28] Supra, footnote 2
- [29] Rollo, pp. 153-160
- [30] Supra, footnote 3
- [31] Rollo, pp. 9-10
- [32] Jonathan I. Sang-an vs. Equator Knights Detective and Security Agency, Inc. (G. R. No. 173189, February 13, 2013)
- [33] Century Iron Works, Inc. and Benito Chua vs. Eleto B. Bañas (G. R. No. 184116, June 19, 2013)
- [34] Id.
- [35] Id.
- [36] Id.
- [37] Id.
- [38] Rollo, pp. 99-102
- [39] Rollo, p. 100 (Note: Petitioner said, “Ang mga susi ay nakalagay sa pako sa likod ng lamesa ko”)
- [40] Rollo, p. 100 (Note: Petitioner also mentioned “Kung hindi ako ang magbubukas, ibibigay ko sa maglalabas ang susi para buksan”)
- [41] Rollo, p. 101 (Note: Petitioner admitted, “During the time of Alex Gan, nagkaroon din ng nakawan ng mentol, ang ginawa nila kinandaduhan na nila”)

[42] Rollo, p. 102 (Note: Atty. Resurreccion observed that there was no forcible entry in the Chemical Room when the drums of Menthol Crystals were stolen, thus the conclusion that the key entrusted to petitioner was used to enter the room)

[43] Norsk Hydro (Phils.), Inc., et al. vs. Benjamin S. Rosales, Jr. (G. R. No. 162871, January 31, 2007), defined the two classes of position of trust:

“There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.”

[44] The case of Rolando DS. Torres vs. Rural Bank of San Juan, Inc., et al. (G.R. No. 184520, March 13, 2013) is instructive:

“xxx Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or is routinely charged with the care and custody of the employer's money or property. In order to constitute a just cause for dismissal, the act complained of must be so related to the performance of the duties of the dismissed employee as would show that he or she is unfit to continue working for the employer. xxx”

[45] Baguio Central University vs. Ignacio Gallente (G. R. No. 188267, December 2, 2013)

[46] Rollo, pp. 150-151

[47] Mansion Printing Center and Clement Cheng vs. Diosdado Bitara, Jr. (G. R. No. 168120, January 25, 2012)

[48] Rollo, pp. 90-91

[49] Rollo, pp. 35-37

[50] Rollo, pp. 97-116

[51] Rollo, pp. 117-119

[52] Roberto Bordomeo, et al. vs. Court of Appeals, et al. (G. R. No. 161596. February 20, 2013)

[53] Id.

[54] Mayon Hotel & Restaurant, Pacita O. Po and/or Josefa Po Lam vs. Rolando Adana, et al. (G. R. No. 157634, May 16, 2005), citing the case of Carolina Castillo vs. National Labor Relations Commission and Philippine Commercial & International Bank (G. R. No. 104319, June 17, 1999), states that factual findings of administrative bodies like the NLRC are affirmed only if they are supported by substantial evidence that is manifest in the decision and on the records. As stated in Castillo:

“xxx [A]buse of discretion does not necessarily follow from a reversal by the NLRC of a decision of a Labor Arbiter. Mere variance in evidentiary assessment between the NLRC and the Labor Arbiter does not automatically call for a full review of the facts by this Court. The NLRC's decision, so long as it is not bereft of substantial support from the records, deserves respect from this Court. As a rule, the original and exclusive jurisdiction to review a decision or resolution of respondent NLRC in a petition for certiorari under Rule 65 of the Rules of Court does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. Thus, the NLRC's factual findings, if supported by substantial evidence, are entitled to

great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded the evidence before it or had misappreciated the evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated. xxx” (emphasis ours)

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